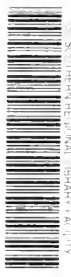


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THE
RELATION

BETWEEN

THE LORD OF A MANNOR
AND THE COPPY-HOLDER
HIS TENANT





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The following table shows the results of the experiment. The first column is the number of trials, the second column is the number of correct responses, and the third column is the percentage of correct responses.

Number of trials	Number of correct responses	Percentage of correct responses
10	8	80%
20	15	75%
30	22	73%
40	28	70%
50	35	70%
60	42	70%
70	48	69%
80	55	69%
90	62	69%
100	68	68%



THE RELATION BETWEEN
THE LORD OF A MANNOR
AND THE COPPY-HOLDER
HIS TENANT.

*A REPRINT OF THE
EDITION PRINTED 1635.*

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A REPRINT OF:—

THE
RELATION
BETWEENE
THE LORD OF A MANNOR
AND THE COPPY-HOLDER
His TENANT.

Delivered in the Learned Readings of the late
Excellent and Famous Lawyer, CHAR. CAL-
THROPE of the Honorable Society of
Lincolnes-Inne Esq;.

Whereby it doth appeare for what causes a Cobby-
holder may forfeite his Cobby-hold Estate,
and for what not: and likewise
what Lord can grant a
Cobby, and to *whom.*

Published for the good of the Lords of Mannors,
and their Tenants

*Non magis pro manibus quam pro servandis legibus
liberi Cives pugnare debent, siquidem sine manibus
Respublica potest consistere sine Legibus non potest.*

L O N D O N :

Printed for *William Cooke*, and are to be sold at
his shop neere Furnivals Inne-gate in
Holborne, 1635.

THE MANORIAL SOCIETY

1, MITRE COURT BUILDINGS, TEMPLE, LONDON, E.C.

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1917

J. MILES & Co. LTD.
68-70, Wardour Street,
London, W.

Introductory Note.

It is said that the best method of historical representation is that which echoes the original voice: in the "Relation of the Lord of the Mannor to the Cobby-holder his Tenant" we hear not the echo but the original voice itself.

History is a glass through which the past may be seen; too often it is coloured by the bias of the historian, and the reader sees through the glass darkly, but in contemporary writings of the time he may see things face to face.

In presenting to the members of the Manorial Society a copy of the First Edition of this work (1635) we are tapping a good deal of ancient wisdom not far from its source, for it is obvious that we moderns can know nothing of ancient law and custom except in the treatises, pamphlets and manuscripts of those ancestral times.

As law is said to be "the perfection of reason, and custom the principal magistrate of men's lives and the great multiplicator of virtues," it is in the highest degree interesting and important by such documents as this and others, edited by the Manorial Society, to trace the gradual association of the people with the law and its administration, which paved the way to that constitutional and ordered liberty we now enjoy, which also may be considered to progressively reflect the English mind and soul.

Neglect of historical study and knowledge is to a nation what the loss of memory is to a man—a sign of old age and decrepitude. Law and custom as a principle of life has been the most powerful check upon the passions of mankind, but as a system of opinion law and custom has at times converted men into monsters of oppression.

Both history and custom are full of anomalies, and single laws and customs give colouring to periods and make things to be what they are; even trivial incidents derive augmented significance and interest from the passage of years, so as there are anomalies in every history and custom, so there is a history in every anomaly, and our constitution is full of them, as the study of such documents as the "Relation of the Lord of the Mannor to the Cobby-holder his Tenant," which it is the laudable and self-imposed task of the Manorial Society to edit, goes to prove.

The technical nature of this book marks it out as the particular preserve of the student of law, and it is regrettable that by the continued absence on active service (1917) of the Society's Registrar, Mr. Charles Greenwood, the work is deprived of the illumin-

Harvard 117/154

ating Preface and Introduction which he usually contributes to the Society's publications. Mr. Greenwood's minute intimacy and profound knowledge of charter, custom, franchise, tradition, precedent and prescription would have added much to the value and usefulness of the volume.

The author, Sir Charles Calthrope, who died 6th January, 1616, was probably one of the Calthropes of Suffolk and born in London. He was employed in the service of the Crown in Ireland, mainly in securing forfeited lands and the reservation of royal rights. Burghley says he was unpopular and not efficient, being "too much addicted to Irish interests." He was Attorney-General for Ireland 1583 to 1603. Knighted in Dublin, 1604, and raised to Justice of the Common Pleas there, which did not please him, for his salary as Attorney-General had been £159 6s. 8d., whereas as Judge it was barely half that sum.

For the sake of accuracy it may be pointed out that where Sir Charles bursts into verse by quoting Horace (page 30: "That a custome must be compulsory," &c., &c.) he is incorrect, either by lapse of memory or from a faulty original, for—

" O derunt peccare boni virtutis amore,
O derunt peccare mali formidine poenae,"

as he incorrectly quotes, is correctly thus—

" Oderunt peccare boni virtutis amore
Tu nihil admittes in te formidine poenae."

HORACE, Epistles l. XVI., 52.

The publication is a copy of one of the three tracts or treatises upon manorial law and custom previously referred to by the Registrar in his Introductory Note to "The Order of Keeping a Court Leet and Court Baron, 1650," a facsimile copy whereof was printed by the Society in 1914.

The current cost of such a reproduction renders it now impossible for the Society to reproduce the publication in facsimile, but as the typography of each is practically alike it is of little consequence.

As pointed out in the Introductory Note above mentioned, these publications are bound up together with a fifth edition (1650) of "Coke's Complete Copyholder," which it is hoped the Society may be able to reprint later on. These three little volumes formed a valuable compendium of manorial law and practice in those days, to which both student and practitioner could turn for instruction and reference.

It is from such authorities as well as from subsequent statute and case law that the learned authors of the more modern textbooks upon manorial law and custom mainly drew their inspiration and garnered their facts, and it is particularly interesting to observe how closely the actual words of those ancient tracts are

followed and reproduced in later works of a more pretentious character.

After all there is little room for originality in such works. Comment and surmise give interest and secure attention, but the hard facts of law and custom are embodied in contemporary records themselves, and it is only those facts, as such, that count and weigh in the scales of Justice when her aid is invoked in the settlement of modern disputes relating to manorial law and precedent.

W. F. ANNESLEY,

Honorary Fellow of the Manorial Society.

September, 1917.

COPPY-HOLDS.

The first Lecture.

THE great injuries which are offered, and small remedies which are used in cases of Coppy-holds, which as it seemeth, doe grow by the obscure knowledge what Law & Custome judgeth in these matters of Coppy-hold: moveth me to shew some part of my Travailes in these points, not thereby to animate Coppy-hold Tenants which would by too much advancing their Tenure, pretend only to be Tenants by Custome, and not Tenants at *Will*, nor to encourage any *Coppy-hold* Lord, which could by too much abasing these *Tenures*, pretend to have such *Coppy-holders* onely *Tenants* at *Will*; and not regard their customes, but to prove unto you, that as their Title and name sheweth they are *Tenants* at *will*, and *Tenants* by Custome in their Land, and they consist both of their Lords *will* and *Custome* of the *Mannour* in their degrees. And that this *Will* and *Custome* be contained within the Limits of Law and reason, according to such rules as shall bee hereafter declared.

First I wil shew what a Coppy-hold is, then whereof it doth consist, and what estimation the same is of, by the Antiquity of time, and by the Lawes and Statutes of this Realme.

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Master *Littleton* in his first book of *Tenures*, defineth a Tenant by Cobby of Court Role; and to be where a man is seised of a *Mannour*, in which is a *Custom* that hath been used time out of minde, that certaine Tenants of the same *Mannour* have used, to have certaine Lands and Tenements to hold to them and their heires, in Fee Simple, Fee Taile, or for Life at the will of the Lord after the Custom of the Mannour: And that they have no other evidence but the Roles of the Court, by which definition, and by certaine other observations of the Law it may bee gathered, that a Cobby-hold doth consist of these sixe principall grounds, or Circumstances. (*viz.*)

First, there must be a *Mannour*, for the maintenance of *Cobbyhold*.

Secondly, a custom for the allowing of the same.

Thirdly, there must be a Court holden for the proove of the Cobby-holders.

Fourthly, there must be a Lord to give the *Cobbyhold*.

Fiftly, there must be a *Tenant* of capacity to take the *Tenement*.

Lastly, the thing to be Granted which must bee such as is Grantable, and may bee helde of the Lord according unto the *Tenure*.

But first before I speake of these Circumstances, I will briefly declare unto you the Dignity and Estimation of *Cobbyholders*, by the Antiquity and

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allowance of time, and by the Lawes and Statutes of this Realme.

It appeareth by a certaine Booke intituled *De priscis anglor : legibus* : Translated out of *Saxon* Tongue by Master *Lambert* of *Lincolns Inne* ; that *Coppy-holds* were long before the Conquest, and then called by the name of (Bookeland) as you may see in the beginning of the Booke, in the Treatise *De rerum & Verborum explicatione* ; and by Master *BRACTON* an Auncient Writer of the Lawes of ENGLAND, who in his Booke Writeth divers presidents and Records of King *Henry* 3. of allowance that Copyholders or *Customary tenants* doing their due services, the Lord might not expell them ; according to the Opinion of the latter Judges, in the time of *Edward* the 3. and *Edward* the fourth : And it appeareth by Master *Fitz-Herberts Abridgement*, they were preserved by a *special Writ* for that purpose, and the Lord thereby compelled to do right. And in the time of *Henry* the fourth, Tenants by the Virge, which are the same in Nature, as *Coppyholders* be, were allowed by the name of *Sokemaines* in *Franktenure*, & in the time of *Henry* 7. were allowed ayde of the King, for defence of their estates. So that in every Kings time *Coppy-holders* have had their Allowances according unto their Natures unto this present time : wherein our Justices are still of opinion, as the sayd grave Sages have beene in times past. Now I will further procede

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in some particular use of these Tenures, according to the Lawes and Statutes of this Realme: And because I find none that doth so much deface the estimation of *Coppyholders*, as Master *Fitz-herbert* doth in his Writ *De Recto clauso*. I will begin with his words and judgment in the same, and proceed to other Authorities.

Master *Fitz-Herbert* sayth, that this Terme *Coppyholders* is but a new Terme, newly found out, & that in old time they were called Tenants in Vilenage, or base Tenure; and this, saith he, doth appeare in the old Tenures, for no Coppy-holders are there spoken of, although there were at that time such Tenants. But then saith, they were called Tenants in Vilenage, and saith, as appeareth 44. *Henry 4*. If a false judgement be given against them, in the Lords Court, they shall have no remedy, but sue to their Lord by petition, because to hold by Coppy of Court Role, which is as hee saith base Tenure, is to hold in Villenage, which said opinion of *Fitz-Herbert*, have beene by divers wrested, to make no diversity betweene Tenure in Villenage, and Tenure, by Coppy of Court Role or base Tenure, wherein whatsoever interpretation may be made, Master *Fitz Herberts* meaning is very plaine, and the Booke of the old Tenures, is to be farre otherwise understood: as also I suppose, all other Authorities in our Law doe make and appoint difference betweene the said Tenures. And first touching the Booke of the old

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Tenures it is plaine, that the Booke maketh a plaine distinction betweene Tenure in Villenage, and *Tenure* in Fee Base, which is understood this *Tenure* by Coppy-hold, and calleth it a Fee, although a base Fee, and maketh diverse distinctions betweene them, and saith, that the Tenants in *Villenage* must doe all such things as their Lord will command them. But otherwise, it is of the *Tenants* in base Fee. And this it seemeth the sayd Booke of old *Tenures* to be by Mr. *Fitzherbert* mis-recited, which I am the bolder to affirme, saving the due reverence to his Learning: because one Mr. *Thornton* of *Lincolns* Inne, a man very learned in his late Reading thereupon the *Statute of Forger de faits*: speaking of *Forging Court Roles*, did plainely affirme the Booke of the old *Tenures* to bee mistaken by Mr. *Fitzherbert* in this point. And besides, for the further credit of *Coppy holds*, wee ought to consider the great Authority of Mr. *Littleton*, who amongst the rest of his *Tenures*, doth make a divided Chapter thereof, differing from the *Tenure* in *Villenage*, shewing there the Suites and Plaints of *Coppy holders*, saying that they have an Estate of Inheritance according to the Custome: And delivereth his owne opinion, that if a *Coppy-holder* doing his services be expelled by the Lord, he shall have an Action of Trespasse against his Lord: And saith that *Danby* and *Brian* 21. Ed. 4. were of the same minde, according to which is *Bracton*, and the sayd Presidents of *Hen.* 3. and the Writ used in

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Tempore, R. 2. besides many other reasons at the Common-Law, &c. proving that by use and circumstance things may alter and change their originall nature.

As for example, the services of *Socagetenure* was at the beginning, (as Mr. *Littleton* sayth) to Till the Lords Land, &c. And yet now by consent of the Lord, and by continuance of time are turned into money, and other Services in lieu thereof. Even so may be said of *Coppyholds*, as long as the *Tenants* themselves be free, though their *Tenure* were at beginning never so bound and base : yet by course of time, they may gaine more liberty and freedome, and grow to more estimation and account. Another reason and Rule there is at the Common Law, to this intent, that some things there were which in the beginning were but *voluntary*, and yet in the end by continuance became *Compulsary*, as appeareth by the 27. *Ass. pla. 8.* & *Brook tit. præscrip. pla. 49. 27. Ass. præscrip. Brac.* That a man that did at the first of his own benevolence repaire a high way or a Bridge by often using to doe it, was afterwards compelled thereunto *volens nolens*. Even so it may be sayd of the *Coppy-holders*, who at the first held but at the freewil of the Lord ; yet now by usage and continual granting time out of mind, they have gotten an estate after the Custome, that doing their Services, and behaving themselves wel, they cannot by Law or Reason be deprived. Thus much for the

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allowance of *Coppy-holders* by the Common-Law, now let us consider the Reputation of them by the Statutes and Parliament Law.

Statutes and
Parliament
Laws.

It appeareth by the Statute of 1. *Rich.* 3. *ca.* 4. & 19. *Hen.* 7. *ca.* 16. That a *Coppy-holder* that may dispend twenty six shillings eight pence by the yeere shall be Empannelled on a Jury, as he that may dispend twenty shillings by the yeere of Free Lands. And by the Statute of the 2. *Ed.* 6. *cap.* 8. the Interest of *Coppy-holders* are reserved, being found by Office after the death of the Kings Tenants, as well as other Estates at the Common-Law, and so doth the Statute of Monasteries. 31. *Hen.* 8. *cap.* 13. & 1. *Edw.* 6. *cap.* 14. preserve *Coppy-holds* from dissolving. And it will seeme that *Coppy-holders* are for the good of the Common-wealth, and therefore to be maintained, for that some have been erected and established by Parliament, which were not *demisable* by *Coppy* before, as appeareth by the Statutes 32. *Hen.* 8. 2. 2. *Ed.* 32.

What shall be said, a Mannour, and such a Mannour as wil maintaine a Coppy-hold. A Mannour consisteth in two parts (*viz.*) Demeasnes and Services, and neither of these two parts hath the name of a Mannour without the other : for as a Messuage or Lands cannot be called Demeasnes without Tenants thereunto belonging, to pay Rents and doe Services, or Lands : So on the other part, though a Man have Tenants to pay him Rents, and doe him Service, and

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no Messuage or Lands whereupon to keepe his Court, and to receive his Rents and Services, this cannot be called a Mannour, but onely a Signiory in grosse, *Fitz. na. brev. s. 3. & 8.*

Demeanes are so called, for that the Lord himselfe occupieth and manureth them *In son maine Demeasne*, but all Lands that have been in the Lords owne hands, be not called *Demeanes*, for all Free-holdes and Coppy-holds were in his owne hands at the beginning. But *Demeanes* is that which is now, and time out of Mind have beene in the Lords hands, or occupation of his Bayliffe or Servants : And that also which auncient Coppy-hold may be to some purpose called *Demeasnes*. because in every Surrender in *Manus Domini*, and every grant *extra manus Domini*, the Lord hath a medling with it, and may thereupon keepe his Court, and for the most part cut downe Timber, and such like : And that is also called *Demeasnes*, which now is in the Lords hands by any new Escheate or forfeiture. And also the Lands which are in the hands of the Coppy-holders, and such a *Demeasne* as with other Services will make a Mannour ; though the Lord hath none other demeanes there in his owne hands, nor in the hands of his Bayliffe, or servants such service, as with a Demeasne shal make a *Mannour* to maintaine : Coppy-holds is where a man holdeth Lands or Tenements freely by suite to the Court of the Lord of the *Mannour* within the said Fee : But yet every

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kind of Service will not make a Mannour, for Services are of two kinds, *viz.* That is by Tenure and by covenant; Service by Tenure is also of two sorts, as if a man at this day giveth his Land in tayle, or leaseth it for Life or Yeares, saving the reversion: here is a Service of Fealty incident to this Tenure, betweene the *Doner* or the *Lessor*, and the *Donee* or the *Lessee*. And yet though this be a Service by Tenure, yet is it no such Service as will make a Mannour. For if a man at this Day be seised of twenty Acres of Land, and *Enfeffeth* nineteene severall persons of nineteene of these Acres, saving the twentieth to himselfe, and reserveth of every of his *Feoffees* suite of the Court and other Services to be done to this Court, to be held on the twentieth Acre, though the *Feofments* be by Deed indented, or in tayle or of Lives, yet all is voyde, and avayleth not to make a Mannour. But it maketh onely a Tenure in grosse, for a Tenure may by divers meanes be created at this Day; but a Mannour by no way, by a Common person. *Plow. Com. 2. 693.*

A Mannour must be by Prescription, and the Services by Continuance, time out of mind.

But although a man of this Day cannot make a Mannour, yet hee may in some sort enlarge a Mannour by adding more Services unto it. *9. Ass.* A man seised of a Mannour did give parcell of the same to hold of him by Suite to his Mill within the same Mannour, for this Service the Lord may dis-

Pla. 24. Bro.
Tit. Tenure 26

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In the case of
Monson and
Aston.

traîne, and it is there held to bee accounted parcell
of the Mannour.

By the Report
of *Denham*
of *Lincolns*
Inne.

In like manner, a man may be reserving upon a
gift, Intayle, or Lease for Life : Services ingrosse,
increase the Services of an ancient *Mannour*.
Signior grant le Demeasnes & Services del son Mannour
de Norkelsey & ceo extend en auter Towne per le melior
opinion des Justices de Common Blank le grantee, &c.
keepe a Court there, and so a *Mannour* to be created
at this Day.

What shall be sayd by *Mannour* or a *Tenure* in his
proper nature or Common-Law, and what in respect
of Usage or Custome to maintaine Cobby-holds.

It is to be noted, that although a *Mannour* of his
proper nature ought to consist of demeanes and
Services, yet in some cases that may bee a *Mannour*,
and maintaine Cobby-holders, and a Court Baron ;
by usage and custome, which otherwise by Common
Law is no *Mannour*, nor cannot so be called, &c.

A man seized of a Manour, whereunto be divers
free Tenants, divers Cobby-holders, and divers
speciall Customary Tenants ; and the Customary
Tenants, doe hold to give a tendance on the
Free-holders at the Lords Court. All the Free
Tenants dye saving one, the Lord doth bargain
and sell the Manour to an Estranger : This is now
in respect of the Free *Tenants*, a *Tenure*, and no
Manour, in respect of the Cobby-holders, both a

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Manour, and *Tenure*, and in respect of *Customary Tenants*, neither *Manour*, nor *Tenure*.

If divers doe hold Lands, to dine with the Lord every Sunday in the yeare ; this maketh neither good *Tenure*, nor *Manour*.

But if they hold to wait on the Lord every Sunday at dinner, and to dine with him ; this maketh a good service, but no good *Tenure*.

If divers doe hold Lands by *Coppy* of the *Mannour* of D. and so have done time out of minde, and by the like time there hath beene no Free-holders to the said *Mannour*, Although this be no *Mannour* in his proper nature, yet by usage it is a good *Mannour* to maintaine *Coppy-holds*.

A man seised of a *Mannour*, which time out of minde hath beene called by the name of the *Mannour* of S. and doth demise the same by the name of the *Mannour* of S. this is good.

If a man seised of a *Mannour*, whereto bee sixe Free-holders, and six Villaines Regardants ; The Free-holders dye having issue sixe daughters, the Villaines enterrary with them, yet the same is a *Mannour*, and the villaines thereto regardant.

If a man seised of a *Mannour*, whereto he hath Leet, and wrecke of the sea by prescription, all the *Tenancies* Escheate, yet the Leete and the wrecke still remaine, and it is a *Mannour* to that purpose.

If divers doe hold Lands by Prescription to find the Lords mans meate, and hounds meat, when he

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commeth to hunt the Fox in the said Lands ; this maketh a good *Tenure*, but no good *Mannour* : If divers do hold lands to doe suit and service at the Lords Court, This is most properly such service as maketh a *Mannour* : but if it be to doe suit and Service at the Lords *Court*, when it pleaseth themselves, this is neither *Mannour* nor *Tenure*. If divers doe hold Lands to reparaire a High way within a mile compasse, without the bounds of the Lord of the *Mannour*, this makes a good *Tenure*, but no *Mannour*. But to reparaire or mend the wayes within the Precinct of the *Mannour*, is good to enlarge the *Mannour*.

If divers doe hold Lands to pray for the prosperous Estate of the Lord and his Heires ; this maketh a *Tenure*, but no good *Mannour*.

If divers doe hold Lands of the Lord to waite upon him at twenty dayes warning, twenty miles distant from the *Mannour*, this maketh a good Service, but no good *Tenure*. But if it bee to waite upon the Lord within the said *Mannour*, by certaine space, this maketh both a good *Tenure*, and a good *Mannour*.

If divers hold Lands to beate or kill the Lords Tenants that shall doe Trespasse on the Lords *Demeasnes*, this is neither good *Tenure*, nor good *Mannour*. But if it be to beate and kill the Kings enemies, that shall doe so, this maketh both a good *Tenure*, and a good *Mannour*.

If divers hold Lands by Prescription to doe Ser-

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vice to the Lord, to his Court of the said *Mannour*, twenty miles distant at a place certaine. This is both a good *Tenure* and a good *Mannour*. But if it be to doe Service to his Court at another *Mannour*, this without Prescription, cannot be severance from the first *Mannour*.

If Divers doe hold to come to the Lords Court, and there to doe nothing, this maketh neither good *Tenure* nor good *Mannour*. But to come to the Court, though not to be of the Homage, yet to affeere *Amersments*, or make *Certificates*, or any other Service to the Lord, this maketh a good *Tenure* and a *Mannour*.

If any do hold Lands to doe Divine Service before the Lord and his Tenants in the Court-house, before the beginning of every Court, this maketh both a good *Tenure* and a good *Mannour*. *What shall be said, a good Custome to bee able to maintaine Cobby-hold.*

A Custome to make a Cobby-hold, must be of necessity in the same *Mannour*, where the said Cobby-holds are so granted, *viz.* That the same Lands are, and time out of minde have beene onely Demised and demisable by Cobby of Court Role: for otherwise the Lord cannot grant it by Cobby, because he cannot beginne a Custome at this Day. But if it have beene by like time granted by Cobby, though sithence it came to the Lords hands; yet if the Lord never *Demise* the same by *Free Deede*

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nor otherwise, but by Coppy, then he may well grant againe the same by *Coppy*, for it is neither the person of the Lord, nor the occupation of the Land, that either maketh or marreth the *Coppy-hold*. But onely the usage and manner of *Demising* the same, for the prescription of a *Coppy-holder* consisteth neither in the Land, nor in the Occupier, but onely in the Usage.

THE DIVISION OF CUSTOMES.

Viz. : Customes, Prescriptions, Usage, and Limitation.

The devisi-
on of Customes.

These foure though they be by some confounded together, and indeede are of great Affinity; yet there be divers differences in their severall natures betweene them.

Customes is where by continuance of time, a Right is obtained concerning divers persons in common.

Prescription is where by continuance of time one particular person obtaineth Right against another.

Usage is by continuance of time the efficient cause of them both.

Limitation is where a right may be obtained, by reason of a *non* claime, by the space of a certaine number of yeeres, differing in the Accompt of time, from custome and prescription.

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But what measure of time shall make a Custome; divers have differed in opinion; some judging the same to bee according to the Computation of yeeres, from the time of K. *Hen.* 1. until the Statute of *Merton ca.* 8. which appointeth the limitation in a writ of right: The accompt of which time unto the said Statute, from the said K. time is 76. yeeres, others have thought a hundred yeeres was accompted a Fee simple.

But the true measure thereof according to Master *Littletons* Rule, is where a Custome, or Usage, or other things have beene used, so long as a mans memory cannot remember the contrary. That is, when such matter is pleaded, that no man then in life, hath not heard any thing, nor know any prooffe to the contrary.

And by this it appeareth that *Customes*, and prescriptions, resteth onely in the memory of man, & limitation consisteth only of a certaine time, which hath a certaine beginning and of certaine ending, and is not directed by mans memory, wherein is ment limitation of time, and not limitation of estates.

If Lands have beene demised by Coppy by the space of 60. yeeres, and yet there be some alive, that remembreth the same occupied by Indenture, this is not a good Coppy-hold.

And if Lands have beene demised by Coppy but 40. yeeres, and there is none alive that can remem-

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ber the same to bee otherwise demised : This is a good Coppy-hold, for the number of yeeres makes not the matter, but the memory of man. And it is not 60. 80. or 100. yeeres that maketh a Coppyhold or a custome, though it makes a limitation. But such certaine number of yeeres makes onely a likelihood, or presumption of a prescription ; that is, that it commonly happneth not that any mans memory alive, can remember alone such a number of yeeres. But if any chance to be alive, that remembreth the contrary, then such prescription must give place to such prooffe.

Custometh hath certaine speciall vertues in itselfe, which for the more estimation thereof, I will shortly shew according to certaine precepts and principals allowed by all Lawes, both by the Law of God, the Law of Nature, and the Law of Nations, and by the private Law of every Countrey : as by the Law of GOD it is said, *Si quis videtur contentiosus essenos talem Consuetudinem non habemus, nec ecclesia Dei*, which proveth that the Scripture and the Church of God do attribute somewhat to good customes, though not to evill : And by the Law of Nature, *Consuetudo est altera natura*. And by the Law of Nations, *Consuetudo est optima legum interpretres*. And by the Lawes of this Realme, Princes at their Coronation are sworne, as well to keepe the custome of this Land, as the Lawes of this Land, which Law doth attribute so much to custome, that

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sometimes it is admitted to derogate from the Common Law, for *Consuetudo bona de causa usitata et approbata, privat communem Legem.*

WHEREOF CUSTOME

doth Consist.

Custome although it doth chiefly consist of continuance of time and usage, yet it doth further require seven other necessary properties, incident for the maintenance of a good Custome: Which are these.

First, it must be reasonable, as it appeareth 1.
2. *Ed. 4. 24.*

Secondly, it must be certaine, as appeareth 2.
3. *Ed. 3. 13. Ed. 3. 4.*

Dum fuit infra ætatem. 3. 14. *Ed. 3. 4. 14. H. 4.*

Thirdly, it must be according to Common right. 3.
42. *Ed. 3. 4.*

Fourthly, it must be on good consideration. 4.
5. *Hen. 7. 9. Bro. tit. presor ꝑcon ꝑla. 57. 22. Assi. ꝑla. 58.*

Fiftly, it must bee compulsary. 42. *Ed. 3. Avow 66.* 5.

Sixtly, it must be without prejudice to the King.
3. *Hen. 6. Custome Fits. Hen. 2. 22. Ed. 3. Pre-
scription. 40.*

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Seventhly, it must bee to his profit that claimeth the same. 31. *Ed.* 3. Prescription 40. *et* 28.

Usage is the efficient cause, both of *Custome* and Prescription; for without usage, there can bee neither *Custome* or Prescription, for even as the minde is to man, so is usage to *Custome*. And as you see there bee divers varieties of minds in men, so are there many varieties of *Customes* as you see varieties of Countries, and yet all men perfect, and all *Customes* perfect: some say that men have their minds affected according to the Constitution of their bodies: And so have *Countries* their *Customes*, according to the *constitution* of the places, as in *Kent*, and in *North-Wales*, because those *Countries* have beene most subject to forraigne invasions, (that every man there, may bee of power for resistance.) The inheritance for the most part descend in gavell kind (*viz.*) to every brother alike, and in other middle parts of the Realme for whole government. *Least equality is best.*

The inheritance wholly descendeth to the eldest brother: And in *Borough* English which is in divers *Boroughs*, because their substance commonly is Lands, and in such *Townes*, Lands may bee the better preserved then goods, therefore their youngest sonnes shal onely have their Lands: and as it is in those great parts of the Realme, so it is in divers private parts and Mannors, and divers private and special *customes*. As some Mannors have Coppy-

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hold of inheritance, some for life, or lives : in some Manour the Copy-holders surrender in one manner, and in some in another sort : In some the Fine is Arbitrable : And in some certaine, *et sic in similibus*.

The usage of every Custome doth not rest to be yeerely, dayly, or continually used, but as the equality, and the nature of the thing whereof the Custome is, doth require, as Custome *Harryots* when they fall, of Shacts and Eoldage, in their season of Common of Estovers in their time, and for Coppy-holders, whose Fines are certaine, yet at one time to pay a greater Fine than at another, and all these are good Customes, though they cannot bee used at all times, for Customes may be sometimes used, sometimes not used, sometimes altered, and sometimes not, and therefore in *Custome* you may see there is (*user, non user*) Abuser and interuser.

User is, when according to time and occasion a *Custome* is used.

Non user is when for want of time and occasion, or through negligence, or forgetfulnesse a *Custome* is not used.

Abuser is that, when *Custome* is ill used ; for as User doth nourish *Custome*, so doth Abuser destroy a *Custome* ; and yet in some cases a *Custome* may be sometimes used in one sort, and sometimes in another. And yet a good *Custome*, if there bee good considerations of the exchanging thereof at times, and this I call enteruser.

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If there be a *Coppy-hold*, of an Ancient demesne, and this Land is forfeited to the Lord by waste, and thereupon a seisure awarded thereof, and yet the Lord doth suffer the Tennant still to occupy it, by the space of 20. yeeres, without receiving any Rent for the same, and after grants the said Land to the Tenant by *Coppy*. This grant is good and a good User of the *Coppy-hold*. But if after the said *seisure* awarded, an *Estranger* had entred, and Disseised him of his Land, and made a *Feofment* in *Fee* thereof; And after the Lord re-entred, and grants the same againe by *Coppy* unto the first Tenant, this grant is not good, by reason of the User of this Land.

If the Lord have used at the admission of his *Coppy-hold Tenants*, sometime to take for a Fine two-pence, or sometimes foure-pence for an Acre, sometimes twelvecence an Acre, this User is so uncertaine, that it maketh the Fine arbitrable at the Lords will.

If the Lord of a *Mannour* have used time out of mind, to admit his *Coppy-hold Tenants* without Fine, this usage shall binde the Lord, as well as a Fine certaine.

If the Lord have used to have certain workdayes of his Tenants, and that hath not beene used by the space of twenty yeares last past; yet that *non-user* is no discharge to the *Tenants*, so

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that there be any in life that can remember the same.

If the Tenants have used when they sow their Lands, to pay the Lord Rent-corne, and when it lyeth in pasture to pay their rents in Money, this is a good Inter-user.

If the Tenants have used to pay to their Lord every fourth yeare a double Rent, and every sixt yeare an halfe Rent, this is a good Inter-user.

If the Tenants have used to have Common of Pasture in their Lords Woods, for their Horse-Cattell, and they put in their Neate-Cattell, and destroy the Woods, this is an abuser. But it is but Fineable, and no forfeiture of the *Common*, which they might have rightfully used : No more then if they have Common for a certaine number of Beasts in the Lords Soyle, and they will exceede the number ; this abuse by their Surcharging, is onely fineable, and no Forfeiture.

If a man have a Market to be used one Day in a Weeke, the *non-user* thereof is not forfeiture. And if a man have a Market to bee used on the *Friday* and hee keepeth the same *Friday* and *Munday*, the Mis-user of the *Munday* is no forfeiture of the *Friday*.

If a Man have a Faire to be used two daies and he keeps it three dayes, this abuse is a Forfeiture.

If a man have a Faire for one Day, and he will keepe it two dayes, and that is presented to the *Ex-*

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chequer : If the party being called by *Processe*, doth claime both dayes by Patent, upon sight whereof it appeares hee ought to have but one day by his Patent, and the other by Prescription, though the Prescription bee found against him, and that Day lost, yet he shall enjoy the other Day.

If a man prescribe to have a Faire yearely upon *Bartholmew day*, and if the same doe fall out on the Sunday, then to keepe the same the next day following, this is a good *Prescription*.

If the King doe grant to the Citizens of *Norwich* the *Franchises* and *Liberties* that *London* hath, and the *Franchises* and *Liberties* that *Southampton* hath : if the Citizens of *Norwich* doe abuse one of these *Liberties* that *London* hath ; this is a forfeiture of all those *Liberties* that *London* hath, and of no other. But if the King doth incorporate a Towne, and give them by the same Patent Speciall *Franchises* and *Liberties*, the abuser of the one of these, is a forfeiture of them all.

THAT EVERY CUSTOME

*must bee reasonable ; and what shall be said,
A reasonable Custome.*

Every good *Custome* is grounded upon good *Reason*, and that shall bee said in *Reason* a good

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Custom, that in reason is a good Law ; for *Law* and *Custom* be of that affinity, as both doth allow like reason, and both doth forbid like inconveniences. and the finall effect of both to discusse and to discern every mans true right, and to give to every man that which is his owne. For although *Custom* in some cases differ from *Law*, and doth admit execution of some Acts without some ceremonies and circumstances bee required by the *Law* : yet the end and effect of *Custom* is to maintain the like reason that *Law* doth, and to avoyd the like inconveniences.

And therefore if a Lord will *Prescribe* to have such a *Custom* within his *Mannor*, that if the *Beasts* of any of his *Tenants* do him any *Trespasse* upon any of his *Demeasnes*, and there be taken *damage fezant*, that then hee may detaine them untill the owner shall satisfie him for his harmes, as himselfe shall require. This is no reasonable *Custom* that he should be his owne Judge. But to *Prescribe*, that if any of the *Coppy-holders* beasts *Trespasse*, &c. and the same be presented at his Court, that there should be a forfeiture of his *Coppy-hold*, this may be called a reasonable *Custom*.

If *Tenants* of a *Mannour* will *Prescribe* to hold without paying any *Rents* or *Services* for their *Coppy-holds*, this is no good *Custom*, But to *Prescribe* to hold by *Fealty* for all manner of *Services*, is good and reasonable.

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If the Lord will *Prescribe* never to hold a Court, but when it pleaseth himselfe, this is not good. But to *Prescribe* never to hold a Court for the speciall good of any one Tenant, except the same Tenant will pay him a fine for the same, is good and allowable.

THAT EVERY

Custome ought to be certaine; and what shall be said, a Custome certaine.

There is nothing more required in all Lawes and Customes, then certainty; for incertainty in all cases maketh confusion, and therefore Law and Custome doth also agree in this poynt, that without some kinde of certainty, neither *Law* nor *Custome* can be good: for in divers cases, where one thing may bee taken to divers intents, and the circumstances of the case such as to which intent the thing was done, cannot bee certainly judged, there the same thing so doubtfully done, shall to all purposes be judged voyde. And incertainty of *Customes* and *customary* causes, grows chiefly three manner of waies. That is to say, sometimes of the incertainty of the Persons: Sometime the incertainty of the things; and sometimes the incertainty of the cause: and in some of these

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cases, though there bee at the first a Semblance of uncertainty yet by Circumstances and Contingents, the uncertainties may be turned into Certainties. As if the Lord of the Mannour will prescribe, that whensoever any of his Cobby-holders dye without heires, that one other of the Cobby-holders of the same Mannour shall Till the Land for the year following. This is no good Custome, because the intent neither is, nor can be certaine, which of the Tenants shall performe this Service.

But if the *Custome* be, that if a Cobby-holder dye without heire, that then the eldest Tenant of that name, of the said Mannour, shall have this Land; this is a good *Custome*, and containeth in it selfe sufficient certainty.

If a Cobby-holder do Surrender two Acres of Land into the Lords hand, the one to the use of *I. S.* and the other to the use of *I. N.* and doth not name in certainty who shall have the one Acre, and who shall have the other, the limitation of this use is voyd, for this uncertainty.

If a Cobby-hold be surrendred to the use of *I. S.* and his Heires, untill hee shall marry *A. G.* and after the said marriage, then to the use of them two in taile speciall, if after they doe marry, then is the Surrender to them in taile, and till then, to him in Fee.

If the Lord will prescribe to have of his Cobby-holders in the time of peace twopence an Acre of

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Rent, and in the time of Warre four pence an Acre of Rent, this is good *Prescription*, because there is a good consideration of the cause of this incertainty: But to pay unto the Lord two-pence an Acre rent when hee will, and foure-pence an Acre Rent when hee will, this is no good *Prescription*, because there is neither good reason nor consideration hereof, nor can it ever be reduced into any certainty.

THAT CUSTOME MUST

bee according to Common Right: And what shall be said such a Custome, and what not.

42. Henry 4.
Avowry 66.
14. Hen. 4,
Bchon.

Customes and Prescriptions must bee according to common right, that is to prescribe, to have such things as is their right, and reason, to have, and not by custome of Prescription to claime things by way of extortion, or thereby to exact Fines or other things of his Tenant without good cause, or consideration.

If the Lord will prescribe to have of every of his Coppy-holders, for every *Court* that shall bee kept upon the Mannour a certaine sum of money; this is no prescription according to common right, because he ought for Justice sake to doe it *gratis*.

And so it is if the Shrieve will prescribe to have a certaine Fee, for keeping his Turne, this is not a good prescription.

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But if the Lord will prescribe to have a certaine Fee of his Tennants for any extraordinary Court purchased, onely for the benefit of one Tennant, as for one Tennant to take his Cobby-hold, or such like, this is a good prescription according to the common right.

If the Lord will have of any of his Tenants that shall commit a pound Breach, a hundred shillings for a Fine, this is good *Prescription*, but to challenge of every stranger that shall commit a Pound Breach a hundred shillings, this is no good prescription.

Com. Little.
plac. 21. 2 et
Taxley 5. H.
7. 19. B. 2.
R. 3. 16. 13.
Hen. 7. 16.
D. St. 47. 2.
Ed. 4. 17.

If the Lord will *Prescribe* that every of his Cobby-holders within his Mannour that shall marry his Daughter without licence shall pay a Fine to the Lord; this is no good *Prescription* according to common right.

THAT A CUSTOME

must be upon a good Consideration, and what shall be *said such a Custome, and what not.*

Consideration hath a great effect in all Lawes and Customes, and hath as great an operation, as any one thing belonging to the Law, for in most causes it onely guideth and directeth Rights, properties, uses, and estates, sometimes according to the limitation, and sometimes contrary to the limitation, as well in

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cases of *Custom*, as in cases of common Law, for consideration is the beginning of all *Custom*, the ground of all uses, the reason of all rights, and the cause of all duties : For without Consideration no *Custom* can have continuance ; nothing is wrought by any conveyance, no interest transferred, no right removed, no property changed, nor duty accrewed. As if the Lord of a Mannour will prescribe, that whosoever passeth the Kings high way, which lyeth through his Mannour, shall pay to the Lord of the Mannour twelve-pence for his passage. This prescription is not upon good Consideration : But if hee prescribe to have a penny of every one that passeth over such a Bridge, which the Lord of the Mannour doth use to repaire, this is a good prescription, and upon good consideration. If the Lord will prescribe to have a Fine at the Marriage of his Cobby-hold Tenants, in which the *Custom* doth not admit the husband to bee Tenant by courtesie, nor the Wife to be Tenant in Dowre, or have her Widdowes estate ; the prescription of such a Fine is not good : But in such Mannour where the custom doth admit such particular estates, there a prescription for a Fine at the Marriage of his cobby-holders, is upon good consideration.

If a cobby-holder surrender his Land to the use of I. S. so long as I. S. shall serve him in such an office ; if I. S. refuse to serve, his estate doth cease.

If a cobby-holder doth surrender his Land to the

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use of a stranger, in consideration that the same stranger shall marry his daughter before such a day : if the marriage succeeds not, the stranger takes nothing by the Surrenderer : But if the Surrender bee in consideration, that the stranger shall pay such summe of money, at such a day ; though the money bee not payed, yet the Surrenderer standeth good.

If the Cobby-holder in consideration of twenty pounds to bee paid by I. S. doth make a surrender of his Land to N. R. this Surrender is to the use of I. S. because of the consideration, expressed in the Cobby, and not to the use of N. R. But if in the Cobby the use bee expressed to N. R. and no consideration mentioned, the use expressed shall stand against any consideration to be averred.

THAT A CUSTOME MUST

be compulsory ; and what shall be said such a Custome, and what not.

Custome or Law must be *Compulsary*. and not at the liberty of a man, whether hee will performe it or not ; for then it were of no force ; for all Customes and Lawes have their effect in two points. That is, in bidding that which is just, and in forbidding the contrary : So that the Lawes and

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Customes are refrainers of liberties, and doe demaund execution of Justice ; not that every man should have, or doe what they would ; but that which by Justice they ought, whereunto by duty of Law and Custome, hee is compellable, for otherwise it were Voluntary in him, which were to the infringing of the Law and good order : As the Poets,

*Oderunt peccare boni virtutis amore,
Oderunt peccare mali formidine pœnae.*

If the Lord will *prescribe* that every of his Tenants shall give him ten shillings a moneth, to beare charges in time of Warre ; this is no good *Prescription*. But to prescribe that they ought to pay ten shillings, a moneth &c. this is good. For payment is *compulsary*, but gift is *Voluntary*.

If a Coppy-holder doe Surrender his Land to the use of *I. S.* so that the said *I. S.* doe pay him twenty pounds at such a day. If *I. S.* please to pay the same, this is an absolute Surrender, and not conditionall, because the payment is *compulsary*.

But many Customes there are which at the beginning were Voluntary, and now by continuance are growne *Compulsary*. According to the Civill Law. *Que initio fuerunt voluntatis, ex post facto fuerunt necessitatis*, which also agreeth with the Common-Law in many cases, as I have partly touched before.

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THAT A CUSTOME MUST

be without prejudice to the King, and by what prescription the King shall be bound, and what not.

The King hath that Prerogative over his Subjects, that he is not tyed to time as a common person is, for though a common person may *loose* his right by *non* claime within a certaine time, the Kings right is still to be *preserved*, for *Nullum tempus occurrit Regi*. Yet in *speciall cases* where the King is not Intituled against such *prescription* by matter of Record, there such customes shall bind the King.

As for example, if a Coppy-holder *prescribeth* that he holdeth of the King by Coppy, this is good, and by fine certaine, and not arbitrable : to have Waife and Strayes, and Wrecke (but not *Cattallafelonum aut fugitorum*,) and *utlagatorum* without Charters.

The Kings *Advowson* shall never fall into lapse for not *presenting* within sixe Moneths.

THAT A CUSTOME OUGHT

to consist of perdurableness of Estate, and of an able capacity.

To those former parts whereuppon I have declared a good Custome to consist, may be added to either parts, *viz.* That he which will claime by Custome,

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must have a sufficient and perdurable estate to *prescribe*, And also in his owne right, or in some others, a sufficient ability or capacity to *prescribe*.

Touching the first, it is to be understood that hee which will *prescribe*, must have a certaine and undefeazable estate, and not otherwise. As if a *Tenant* at Will, or at sufferance, after hee hath occupied the Land for ten yeares, will *prescribe* to have the same for ten yeeres more, this is not good. But a *Tenant* at Will after the Custome, although hee came in at the first by the Lords wil, yet doing and paying that which he ought, he may *prescribe* to hold the Land whether the Lord will or no : And although a Coppy-holder may *prescribe* in this forme against his Lord, yet against an Estranger, for a common or such like kind of profit, hee cannot *prescribe*, but in the right of the Lord : neither yet can a *Tenant* for life, or for yeeres, *prescribe* in the right of their owne Estate onely, because it lacketh continuance to make a *custome* or *prescription* (except) in some cases of necessity, the Lord of a *Mannour*, or of a Patronage for yeeres or life, may grant a Coppy in perpetuity or *presentation* for a longer time than the estate of the Grantor doth continue, and this is admitted *causa necessitatis*, and not *Jure prescriptionis*.

To the second, Capacity must be in himselfe that doth *prescribe* ; which ability and Capacity must consist in the person of him that doth *prescribe* : For as *prescription* may be sometimes in respect of

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estate, *Mannour, Lands or Offices* ; so may *prescription* sometimes be in respect of *person*, which *person* is not to be understood of a private person ; but of a body Politicke, not that many *persons* may *prescribe*, except the same bee incorporate, and to *prescribe* in respect of their incorporate capacity, and not in respect of their private capacity. As if the inhabitants of *Dale* will *prescribe* to have Common in the Soyle of S. this is no good *prescription* ; for that they be not incorporate, they must *prescribe* that *H. Lord of the Mannour of Dale*, for him and his Tenants within the said *Mannour*, have used to have Common within the said Soyle : so is it for Coppy-holders, for they must *prescribe* in the name of the Lord in such a *case*.

If a man prescribe that hee and his Ancestors have had such an Annuity, this is not good : But if a Bishop doe prescribe that hee and his predecessors have had such an annuity this is good.

The pleading of *Prescription* must be used in forme of Law, as other matters that be pleadable, and forme must be used (likewise) in pleading of Coppy-holds, and other Customary Titles for avoyding of confusion and discord, as well as in other cases of the Common Law, the forme of pleading prescription doth differ as the quality of the thing, whereof *prescription* is made, and sometimes doth differ, as the persons doe differ which make the *prescription* : As if a Coppy-holder makes his Title to

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his Land by *prescription*, he must plead that the same Land is, and hath beene time out of mind *Demised* and *Demiseable* by the Coppy of Court role, according to the custome of the *Mannour* wherof it is holden.

If two men as younger brethren will make their Title to Land in *Gavell-kinde*, they must say, that the same Land is of the *Tenure* and Nature of *Gavell-kinde*, which time out of minde, have bin parted and partable between Heires males.

So if the youngest Sonne maketh his Title to Land in Borough English, hee must plead, that time out of minde, the *Custome* of the said *Mannour* hath bin, that when, or at what time soever a Coppy-holder dyeth *Seised of* any Coppy-hold Lands in the same *Mannour*, having divers Sonnes, that the same hath used *Jure Hereditario*, to descend unto the youngest Sonne, &c.

And as the forme doth differ in the things whereof the *Prescription* is commonly made, so doth it differ as the Persons do differ, which *prescribe* as a private person shall *prescribe* in him and his Ancestors, whose estate he hath. An incorporate person in him and his Predecessors. A Lord of a *Mannour* in him and them which were Lords of that *Mannour*.

A Sheriffe, in him and those which have beene Sheriffes of the same County.

A Steward of a *Mannour* in him and those which have beene Stewards there.

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A Free holder in him and them which have bene Stewards to the said Lord.

A Cobby-holder shall *prescribe* against an Estranger, that the Lord of the Mannour, for him and his Tenants at will, have used the like, &c.

WHAT NECESSITY A

Court Baron is of, whereof it doth consist, how it is defined, and what shall be said a sufficient Court Role to make a Cobby-hold.

Every Manour hath a *Court Baron*, incident to it, of common right, and common necessity, and this *Court Baron* consisteth of foure speciall parts, *viz.* The Lord, the Steward, the Tenants, and the Bayliffe.

A *Court Baron* is defined to bee an assemblie of these parts together, within the said Mannour, to take *Councell*, care, and enquire of causes concerning the same Mannour ; to see justice duely executed, the acts and ordinances there done to bee recorded in the Roles of the same *Court*, which Roles are the evidence of all ordinances, duties, customes, and conveyances betweene the Lord and Tennants of the said Mannour, and are to bee entred by the Steward or an Officer indifferent betweene the Lord and his Tennants, and the same Roles to remaine

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with the Lord, thereby to know his Tennants, his Rents, and his Fines, his Customes, and his services.

And the particular grant of every *Coppy-hold*, to bee copyed out of the Roles, the copyes thereof to bee delivered to every particular Tennant, neither can they make any other Title to the said Tenements, but by their said *Coppy*.

If the Lord of the Mannour having *Coppy-hold* Lands Surrendred into his hands, will in the presence of his Tennants out of the *Court*, grant the same to another, and the Steward entreth the same into the Court-Booke, and maketh thereof a Coppy to the grantee, and the Lord dye before the next Court, this is no good Coppy to hold the Land.

But if the same Surrender, and grant be presented at the next Court, in the life of the Lord, and the grantee admitted Tenant, and a Coppy made to him, this is a good Coppy.

If the Lord of a Mannour having ancient Coppy-hold in his hands, will by a deed of Feofment, or by a Fine grant this Land to one to hold at the will of the Lord, according to the Custome, yet this cannot make a good Coppy-hold.

If the Lord in open Court doth grant a Coppy-hold Land, and the Steward maketh no entry thereof in the Court Roles, this is not good, though it bee never so publicke done, nor no Collaterall prooffe can make it good.

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But if the Tenant have no Coppy made unto him out of the Role, or if hee loose his *Coppy*, yet the Roles is still a sufficient tytle for his *Coppy-hold*, if the Roles bee also lost, yet it seemeth that by prooffe hee can make this good.

If Ordinances or by Lawes bee newly made, and Recorded in the Roles of the Court, if the Court Roles bee lost, the by Lawes be set at Liberty, yet if there be any ancient customes or priviledges by *Prescriptions* not entred in the Roles, &c. though the Roles be lost, yet they remaine good.

WHO SHALL BE SAID

such a Lord of a Mannour as
hath power to grant a Coppy-hold.

A Lord to grant or allow a Coppy-hold, must be such a one, as by *Littletons* definition is seised of a Mannour, so that he must be in possession at the time of the grant, for although he have good right and title, yet if he be not in possession of the Mannour, it will not serve : and on the other side, if hee bee in possession of the Mannour, though he have neither right nor title thereunto, yet in many cases the grant and allowance of such a *Coppy*, is good as *Dominus de facto, sed non de jure*. And in some cases a *Coppy-hold* shall be adjudged good, according to the

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largeness of the state of the Lord that granted the same, and in some cases shall continue good for a longer time than the estate of the granter was at the time of the grant. But that is to be understood in case of necessity, otherwise it will not be allowed.

If a man seised of a Mannour, in which are divers *Coppy-holds* demisable for lives, is disseised, and the disseisor granteth a *Coppy-hold*, being voide, for three lives ; this is not good to binde the disseised, otherwise it is of a Coppy-hold of Inheritance, because it is necessary to admit the next heire.

If a man have a Title to enter into a Mannour for a condition broken, and he granteth a *Coppy-hold* of the same Mannour (being void) at a *Court Baron*, this is a good grant, for the keeping of the *Court* amounteth to an entre into the Mannour.

A man seised of a Mannour for life, whereunto bee Coppy-hold of Inheritance belonging, and one Coppy-holder Surrendreth to the use of a stranger in Fee, the Lord may grant this in Fee, and this Grant shall binde him in the reversion ; but if the Coppy-holds being demisable for lives, it is otherwise, for then hee cannot upon Surrender grant the same, longer than the life of the Grantor. But if the Lord of a Mannour for yeeres, or during the minority of a Ward, of which the Coppy-holds are demisable for three lives successively, and not survivingly ; in this case if the Coppy-holder dyeth,

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the Lord may grant the same, being voide for three lives, at his pleasure, and this shall binde him in the Reversion, or the heire at his full age.

WHO SHALL BE SAID

such a Tenant as may be a COPPY-HOLDER.

Although there seemeth some shew of difference betweene Cobby-holders, and Customary Tenants, yet differ not they so much in nature, as in name ; for although some bee called Cobby-holders, some Customary, some Tenants by the Virg, some base Tenants, some bound Tenants, and some by one name, and some by another ; yet doe they all agree in substance and kinde of Tenure, though differ in some ceremonies and kinde of serving, and therefore the name is not the matter, but the Tenure.

Hee shall bee said a person sufficient to be a Cobby-holder, who is of himselfe able, or by another to doe the service of a *Cobby-holder* ; as an infant may bee a Cobby-holder for his Gardein, and prochein any may doe the service ; so may a feme Covert, and her husband shall doe the service : But a lunaticke, or Ideot cannot bee a Cobby-holder, because they cannot doe the service themselves, nor depute any other ; and the Lord shall retaine the Cobby-hold of an Ideot, and not the Queene.

Infant Itin.
Covert Lunatick Nemy 13.
Eliz. Dier.
301.

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A Bond-man or aliene borne may bee a *Coppy-holder*, and the King or Lord cannot seise the same.

But a man cannot be a *Coppy-holder* unto a Mannour, whereof hee himselfe is Lord, although hee bee but *Dominus pro termine annorum*. or in *Jure Uxoris*.

WHAT SHALL BE SAID

such Lands or other things as are demisable by
Coppy, and may be *holden by Coppy*.

It may bee said of *Coppy-hold* Lands, as is afore-said of the Tenants ; they may differ in name, but not in nature : As some called *Coppy-hold* Lands, some customary Lands, some bound Lands, some base Lands, some ancient Lands, some demesne Lands, some encrease Lands, some Mollendes, some waste Lands, some worke Lands, some loose Lands, and some Vierge-lands.

And although *Coppy-hold* lands bee specially so called, because it is holden by Coppy of Court Role, customarie lands because of some special custome ; Bond lands because of the Bond, Tenure, base lands because of Base Tenure, ancient lands, because of the old demise, demesne Lands because of its new demise, and late being in the hands of the Lord of the Mannour ; increased lands, because

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it is late purchased, and laid to the Mannour: Mollands, because it is holden by easie rents, or no rents at all; waste land, because it hath beene lately improved out of the waste of the Mannour; Worke lands, such as hath common appendant belonging to it; lose land, because it is holden by uncertainty of Rents; and Veirge land, because it is holden by the Veirge: Yet al the said lands are holden in one general kinde, that is, by custome, and continuance of Time, and the diversity of their names doth not alter the nature of their Tenure.

It seemeth by *Littleton*, that onely Lands and Tenements are demisable by Coppy: And therefore if the Lord of a Mannour will grant the rent charge, or the office of Stewardship, or Baylewicke of his Mannour by Coppy, or a common in grosse by Coppy, these bee not good grants, because they lye not in Tenure, and also because the *Custome* doth not extend unto them, but common appendent to a Tenement or Coppy-hold lands may be demised with the Tenement by Coppy.

Demeasne lands which within time of memory, have beene occupied by the Lord himselfe, or his Farmour, is not good to be granted by Coppy, because of the newnesse of the grant, yet by continuance of time it may be good Coppy-hold, when the memory of the contrary is worne away, as hath beene said before. Neither can the Lord that granted such a Coppy, put out his *Coppy-holder*

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during his life that granted the same, because hee should not bee received to disable his owne grant. If a Cobby-holder doe Surrender his cobby-hold into the Lords hands, meerely to the use of the Lord, I doubt whether the Lord may grant this againe by Cobby, as hee may where it comes unto him by forfeiture, or by escheate, because it is made percell in demeasne by his owne acceptance, and not by the Act of the Law, *quare*.

Note that neither the Statute of *West. 2. de donis conditionalibus*, nor any other Statute, that hath not Cobbyholds named in it, doth extend to Cobby-hold Lands, as the Statute *Staple. 27. Ed. 3.* nor the Statute of Heresie *2. Hen. 5.* nor the Statute of Wills *32. Henry* the eight, nor the Statute of *Limitation*, made the same yeere as is now taken *contra* to Master *Brooke in novel cases. 426.*

But though a gift in Taile of a Cobby-holder, be not contained in the same Statute of *West.* the second : Yet I thinke in such Mannour, where time out of minde they have used to make gifts in Taile of Cobby-hold *Lands*, there such gifts bee good at this day, and they may make protestation in the nature of any Writ, as appeareth by *Littleton.*

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WHAT SHALL BE SAID

a good Surrender.

As in the conveying of Free Lands there is required some ceremony and publicke notice, so is there in the assuring of Coppy-holds necessarily some publicke Fact to bee done therein, which is the Surrender. In which ceremony there is contained two effects, the one what is surrendered and to whose use; the other that it bee done with the Lords good will, and for that cause it is surrendred into his hands. And although there be divers wayes of Surrender in severall Mannours, as within some Mannours to surrender by the hand of another Coppy-holder, and in some other to surrender to the Stewards hands, in some to the Bayliffes hands, and some by giving a yard to the Steward, in some by giving his hand, or his glove, which bee outward signes of his intent: Yet in all these kindes the words of Surrender must not bee divers, but one, and to one effect, and must be either words of Surrender expressed, or words of Surrender implied; and therefore if a Coppy-holder will bargaine and sell his Land to *I. S.* and this is found by the Homage, and *I. S.* prayeth to bee admitted Tenant, yet the heire of the Coppy-holder shall avoyde the Admission, because of the insufficiency of the Surrender, taking by the words of Bargaine and Sale, and not by words of Surrender, *opi. Sigr. Dier 8.*

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Dier Eliz. Lou ill dit. que relees ne vault inure Come une surrender.

If a Coppy-holder commeth into the *Court*, and desireth his Lord to admit his sonne to bee Tenant in his fathers place, this seemeth a good surrender to the use of the sonne.

If a Coppy-holder will in the presence of other Coppy-holders of the same Mannour, say that hee is content to Surrender his coppy-hold lands to the use of *I. S.* this is no good Surrender : But if hee saith, hee doth surrender into the hands of the Lord to the use of *I. S.* if the Lord will thereunto agree, this is a good Surrender, whether the Lord will or not.

If the Tenant will Resigne his Interest in the Court, into the Lords hands, therewithall for the Lord to doe his will, this is a good Surrender if it be accepted.

If a *Coppy-holder* will say hee will bee no longer the Lords Tenant, though these words bee recorded, yet this is no good Surrender.

If a Coppy-holder for life take a new Estate for life by coppy, this is a surrender of his first estate.

But if a coppy-holder for life will take a Lease of the same by Indenture for life, this is not a good Surrender of the Coppy-hold : *Quære.*

If a Coppy-holder commeth to the Lord, and telleth him, that for the preferment of his Sonne in marriage, with such a mans daughter ; his will is, to give his Land presently to his Sonne, and desireth

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the Lord that he would be contented therewith, this is no good Surrender.

But if he had said these words in the Lords Court, and the same recorded, or found by Homage as a Surrender, and so presented, then this had been a good Surrender without any other words of Surrender.

THAT A COPPY-HOLDER

must bee admitted Tenant, and *what shall be said a good admittance of a COPPY-HOLDER.*

If a Cobby-hold descend unto a married woman, and her husband take the profits thereof, and suffer a Court day to passe without admittance of his Wife, and then the Wife dyes, the Husband shall not be Tenant by the curtesie, but in the 12. *Eliz. Dyer* 291. 292. it seemeth that the contrary should bee the better opinion.

By Sergeant
Walmesley
12. *Eliz.* 291.
292.

An entry before admittance is no forfeiture, without an especiall custome pleaded, but the heire may make a forfeiture for *non* payment of the Rent, as the custome was there pleaded before admittance.

30. *Hen.* 8.
Dier. 42. 16.
there.

If a Cobby-hold be surrendred unto the use of a stranger upon condition, and the condition be broken, the party that made the Surrender may reenter and bee a Cobby-holder to all intents, with-

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out any new admission, for he did depart with the Land but upon a condition.

Also if a Surrender of a Cobby-hold bee made to the use of a stranger for Life, and the Lord makes a grant thereof, to the same stranger in Fee, this shall not binde the heire of the Tenant, but that hee may enter after the death of the grantee ; for hee tooke the Land by the Surrender, and not by the grant made by the Lord : for the Lord is but an instrument for the conveyance of the Land ; for if I make a Surrender unto the Lord *ea intentione*, that hee shall grant over unto such a man, if the Lord will not grant the same, I may then re-enter, but the stranger hath no meanes to enforce the Lord to grant the same over unto him, but hee may maintaine Trespasse against the Lord, if hee doth suffer me to re-enter, and this is the opinion at this day.

The Lord of a Mannour hath that prerogative in his Cobby-holds, that no stranger can bee his Tenant thereof, without his special assent, and admission, and for that cause a Cobby-hold shall not bee lyable to any executions of Statutes, or recognizances, neither shall be *Assets*, in debt or *Formidon*, neither is contained in any the Statutes afore named, for if it were, then should the Lord be forced to have a Cobby-holder whether hee would or no, which is against the nature of a cobby-hold.

And therefore a stranger can never enter, though a Surrender made to his use bee accepted, except

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hee bee admitted Tenant, but otherwise of the heire, for hee may enter and take the profits before the Admittance after the death of his Father.

Admittance may be three manner of waies, an expresse admission, by the words entred into the Court Role, *viz. Unde admissus est Tenens*, or by acceptance, or implication, as if the Lord wil accept the rent by the hands of a stranger : thirdly, by admitting one Cobby-holder, in some cases the Lord shall admit another by implication to some purposes and to these three may bee added a fourth, which is by the entry of the Sonne, after the death of his Father, and the Tenant in Dower after the death of her Husband, which is lawfull without admission, till the next Court, and then they must pray to be admitted, &c.

If a Cobby-holder doe surrender his Land to the use of *I. S.* and the Lord doth grant the same to *I. S.* accordingly, and thereupon hee enters, yet hee is no good Cobby-holder, till hee bee admitted : But if *I. S.* appeareth at the Lords Court, and passeth on the Lords homage, or the Lord accepts his Rent or his Fine for the same Cobby-hold, now hee is become a good Cobby-holder without any further Admission.

If a Cobby-holder surrendreth his Land to the use of *I. S.* for life, the Remainder to the use of *R. N.* for life, and the Lord granteth the same

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accordingly, and admitteth *I. S.* it seemeth this is a good admission to *R. N.* that is in the Remainder.

A *Coppy-holder* in Fee dyeth seised, his heire may make a surrender to the use of a stranger, without admission : *quære.* But if a *Coppy-holder* surrender to the use of *I. S.* this *I. S.* cannot surrender to the use of a stranger, without being first admitted himselfe.

If a *Coppy-holder* Surrender all use of two joyntly, and they are admitted, if the one of them dyeth, the survivor needeth not to bee admitted againe for the moytie : But if a *Coppy-holder* having Issue two daughters, and they are admitted, and then the one of them dyeth, the other must needs bee admitted for the other moyty, for she takes the same by discent.

L'heire dun Coppy-holder poit prender les profits a vera accion de Trespas et serra possessio fratris dune Coppy-hold, devant ascune admittance 12. Eliz. Sigr. Dier 291. poit faire leases per ans. Denby et Bullocks ca.

WHAT SHALL BE SAID

a forfeiture of a COPPY-HOLD.

The Tenant by Coppy standeth bound by his Tenure to the Lord, that if hee doth any thing to

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the Lords dis-inheritance, or in some cases if he doth transgresse the duty of a good Tenant, he shal forfeit his Cobby-holde: But because all offences are not equall, so likewise there are degrees of punishment; for there is a difference betweene offences done wittingly and willingly, and faults ignorantly and unwillingly committed.

And therefore some offences are forfeitures *ipso facto*, some are onely forfeitures when they are presented and not before, and some are onely fineable.

Forfeitures *ipso facto* are offences that lye in misfesans, and bee apparent forfeitures; that Forfeitures that lie in *Nonfesans*, are where the offence is not apparent, nor affirmatively to bee proved without presentment. Non-fesans

Offences Fineable, are offences of contempt, and not of dis-inheritance. Fineable.

As if a Cobby-holder will in the presence, and sitting of the Court Baron, say that the Lord doth extort and exact in due Rents and Services of his Tenants, or such other unreverend words, this is onely Fineable.

But if hee will then and there say, being called forth to bee sworn of his homage, that hee is none of his Lords Tenant, this makes a Forfeiture of his Cobby-hold.

But if hee will there say, that hee will shortly devise a way that hee will bee no longer any of

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the Lords Cobby-holders, this is neither cause of Forfeiture, nor Fine.

If a Cobby-holder *Sendente curia*, doe strike another Cobby-holder, or any other stranger, this is onely Fineable, and maketh no Forfeiture.

If the Steward sheweth forth a Court Role to prove that *I. S.* is a Cobby-holder and this notwithstanding hee will in the Court say, that hee is a Free holder and sheweth forth a Free deed, and claime thereby, and teareth in peeces the Court Role, and publisheth the free deed, this is a cause of Fine and Forfeiture.

But if the said Tenant will there upon some colourable doubt, and question which may arise, whether hee bee a Free holder, or a Cobby-holder say to the Steward, because hee knowes not whether the Rent that hee should pay, be Free rent, or Cobby-hold rent; hee will pay it with protestation that the rent may be recorded as it shall fall out, and with like protestation offer and do his service, though in truth hee bee a Cobby-holder, yet this deserveth neither Fine or Forfeiture.

If a *Cobby-holder* cannot pay his rent, and will not doe his service, this offence is on the Negative, and maketh no forfeiture till it bee presented.

Tenant per Coppie ne poet facere wast ne couper bois per vender, mes pro reperacon tantum 9. Hen. 4. 12. 43. Ed. 3. 32. 80.

But if a *Cobby-holder* doth Alien his Land by Free

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deed, or will commit waste, or demise his Cobbyhold contrary to the Custome, or will sue a replevin against the Lord, for a Distr. lawfully taken for his Rent or service due, or disclaime in the Land being summoned to the Lords Court, or will there claime it as his free hold, or will in any other Court untile any other Lord unto it, or bee attainted of treason or felony, or continue out-lawd, or excommunicate, during the Lords Court, or refuseth to goe with his Lord or other commissioners for that purpose in the service of the Prince, to suppres Rebels, riots, or unlawfull assemblies. All these offences bee apparent mis-fesance and forfeiture *ipse facto* without any presentment.

But if a Cobbyholder being of the grand Inquest at the Assizes or Sessions, shall indite his Lord of any manner of offence committed against the Prince or Lawes of this Realme, or shall upon proces Compulsary give evidence against his Lord, which is true in any cause betweene his Lord and another common person, or betweene the prince and his Lord without compulsory proces, or shall make any bodily arest of his Lord by the commandment of the Shrieve or other lawfull authority, or shall bring any Action or Suit against his Lord in any of the Queenes Courts (except a Replevin case aforesaid) All these last recited, be cause of neither Fines or Forfeitures of any Cobbyhold.

Also a Cobby holder not claiming his Cobby-

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hold after the death of his Ancestor within a yeere and a day, at the Court, if any bee, it is a forfeiture for ever *per. opin Catline, Stowells Case 372. et c. il ꝑenc ceo dee bone custome in þlusors Mannours.*

If Coppyholders being on a Jury will not finde the waste committed, or will not present things presentable, this is a forfeiture of their Tenures, if they be Coppy-holders ; by the opinion of *Catlin, Dier, and Brooke. 4. Eliz. Dier. 211. ꝑe. 31. 6. et 7. Eliz. 233. b. 9. Hen. 6. 44. b.*

If a Coppy-holder will not bee sworne to present such offences as are forfeitures, this is a forfeiture of his estate ; so if he alien, or make Coppy-hold free, for tenne pound, the Lord may enter, for they are wilfull acts, for which the Lord may enter without presentment, but for negligent offences, as for not doing of services, or not acceptance of a Coppy-hold after the death of his ancestor, the Lord cannot seise without presentment of the homage. And if an infant within the yeere after the death of his Ancestor, will not after the Court holden & proclamation made, pray to bee admitted, it is no forfeiture, unless the custome of the Mannour be, that an infant ought to forfeit his estate by such negligence, for it is but a claime at common Law, which barres not an infant, which hath not discretion. Betweene *Hautrey* and *Buckshire* and one of his coppy-holders. 12. *Eliz. Rot. 96.*

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If thirteene cobby-holders bee sworne in a base Court, and twelve agree to give Verdict, the thirteenth will not, it is not a forfeiture, for it is a good verdict without his assent, and perhaps it is not agreeing to his conscience, and therefore it is not properly a not doing, or denyall to doe his duty.

Quare, If there be 12. and 11. agree, and the twelfth will not, for it is not a full Jury. *Pasche*. 20. *Eliz. Co. Bank. ve. 3. Ed. 3. Verdict 10. ou. 11. 29. Ed. 3. ibid. 45. 12. Hen. 4. 10. Sherwe.*

WHAT OFFICE OR POWER

entirely, or dividedly the Lord *Steward*, *Freeholders*, *Cobby-holders*, and the *Bayliffs* have in the *Court Baron*.

Although the Lord, the Steward, the Free-holders the Cobby-holders, and the Bayliffes of every Mannour, have an intermixt and joynt office, and authority in some cases, and to some purposes: yet to other purposes their office is distinct and divided, and every of them doth occupy severall places, persons, and parts.

The Lord is chiefe to command and appoynt the Steward to direct and record the Free holder to affere and judge the Cobby-holders to enforme and present, Bayliffe to attend and execute, &c.

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And all these together make a perfect execution of Justice and Judgements in a Court Baron, and without all these a Court Baron cannot be holden in his proper nature, in respect of all causes belonging to the perfect jurisdiction of a Court Baron.

And yet a Court Baron may be held by use and custome, for some Cobby-hold causes, though it want one of the sayd parties (*viz.*) the Free holders, and therein Cobby-hold cases the Steward doth supply the place of a judge : But no other of the parts aforesaid, except the Free holders, can be missed, or spared in a Court Baron.

But to make some more particular demonstration of their distinct authorities and offices ; and first the Lord as hee is chiefe in place, so is hee in Authority, and occupieth three severall Roomes, the one of a Chancelour in cases of equity, the other of a Justice in a matter of right, the third of himselfe in cases proper and particular to himselfe.

The Steward doth occupy the parts of severall persons, that is to say, Judge and order in cases of Cobby-hold ; and also a Minister, and Register to enter things into the Court Roles, and in both these to bee indifferent betweene the Lord and his Tenants.

The Free-holders doe likewise fulfill two parts, that is, to affeere, & judge ameracements, and also to returne and certifie judgements.

The Cobby-holders also doe hold two severall roomes, *viz.* to enforce offences committed against

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the Lord within that Mannour, and to present such things as shall be given in charge by the Steward.

The Bayliffe doth also occupie two parts, that is to say, to execute the process and Commandments of the Court, and also to returne into the Court the Execution of the same proces.

6. *Ed. 6. Brook. No. case. 84. plin. 387.* the understeward in Court, without authority of the *L.* or of the *high-steward*, may demise *Coppy hold* and it is a good grant, for it is in full Court ; but contrary it is if it be out of Court. *Quere*, if the high steward without authority may demise out of Court.

Finis Lecture Calthrop.

A Coppy-holder being indebted, doth *surrender* to his creditor, upon trust that he shall have the Land to satisfie himselfe of the debt, and then to bee *surrendred* backe againe unto him ; And after the debt levied, the creditor will not *surrender*, whereby according to the Custome of the Mannour, the Tenant pursues an English Bill to the Lord in his Court, by which the trust is proved by deposition ; the Lord seiseth the Land to the use of the first *Coppy-holder* until &c. And *Wray* was of opinion, that he may well so doe, for he hath no other remedy, for the Lord cannot imprison him, as the Lord *Chancelour* of England may doe ; and that the custome of deposition is good, though some doe doubt : but *Gawdy* agrees, but hee saith that the Lord

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cannot retaine and keepe the Land, and if hee should so doe, the other should have a *Subpena*; whereunto *Wray* agreeth, that hee cannot retaine the Land, but seise it and grant it over, which without seising hee cannot doe, 25. *Eliz. B.* upon the motion of *Cooke*, who sayd that 14. *Hen. 4.* 39. and *Fitz. B.* 18. are according to their opinions: For a *Coppy-holder* shall not have a *Writ* of *Error*, nor false judgement, upon a judgement against him in *Court* of the Lord; but he shall sue by bill, and thereupon the Lord shall reise the Land, upon false judgement given by the *Steward*, and shall make restitution.

If one recover a debt by plaint in *Court Baron*, those of the *Court* have not power to make execution to the Plaintiffe of the defendants goods, but they may distraine the defendant, and after the judgement retaine the distres in their hands in safegard, untill the Defendant hath satisfied the Plaintiffe of that wherein hee is condemned by the Court, 46 *Hen. 6.* 17. See the Booke of *Entrees* Fol. 116. 7. *Hen. 4.* 27. In replevin the defendant said, that one *Edward Besall* brought a writ of *Droit* close against the Plaintiffe, and one other in the Lords Court in ancient demeasne, and declared in nature of Assise, and it was found against the plaintiffe, and damages were taxed; whereby the defendant being then under-Bayliffe, by the Stewards commandement, takes the beasts for execution of the damages, and takes and fells them, and delivers

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the monies to the plaintiffe in Assise ; this is a good plea, and yet this is but a Court Baron. And Fol. 29. by *Hull* ; A man recovers ancient Demeasne-Lands, and damages in a Court of ancient Demeasne, and the Bayliffe may take the beasts of him against whom the recovery is, &c. for execution of Damages in every parcell of the Land holden of the Mannour, although that Land be Frank-fee, and it is not denied 22. *Assise*, 72. agrees with 4. *Hen.* 6. *Mr. Kitch.* 115. where it is used to make execution by *levari faciã*, that is a good Custome. 38. *Fd.* 3. Custome 133. upon a recovery in Court Baron, the Defendants Cattle were delivered in execution.

WHERE A TENANT BY

Copy may plead a speciall Custome, which is onely proper to him and his predecessors before him.

Ninth *Eliz.* *Taverner* was sued by the Lord *Cromwel*, for that he had committed waste upon his *Coppy-hold* ; hee pleads by the advice of *Manwood*, that he and those who before him had the house wherein he dwelt, had such a Custome by *Prescription*, that they might fell Timber-trees. &c. And many arguments were against that Custome, in as much as other Tenants of that Mannour had not such a *Custome*, but were punishable, and had for-

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feited their Lands for such waste ; also that Custome was against common right, and not reasonable ; and after long deliberation of the Judges, it was adjudged, that a Tenant may plead a particular *Custome*, as if one prescribe to have a way in the Lords Land, &c. And 19. of *Eliz.* one prescribed that he and those of that Tenement his predecessors, had used to have *Common* of estovers in another Mannour, notwithstanding that the other *Tenants* have not such a *Custome*, and it was good by the advice of all the Justices.

WHERE THE TENANT

*may cut downe Trees, destroy houses by custome,
and such like customes, &c.*

Fourth *Ed.* 6. Justice *Dalisons* Reports, *Sanders*, and divers Justices, Tenant by Coppy of *Court* Role may prescribe to have Wood growing upon the Land. *Montague*, there is such a Custome, and so used in the Counties of *Mid.* Northland, and other places. *Browne*, it hath beene heere agreed of late, that Tenant by the Custome may prescribe to suffer their houses to fall, and to destroy their houses ; so also heere, whereby this is a good Custome. *Montague*, I have heard a Fable, that a Tenant by the Custome may digge in the one part of his house,

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and burne the other part, by the Custome : But if you will agree that the Tenant by Custome shall have the Land against the Lords Will, to him and his heires by the Custome ; why then may they not by the Custome cut downe Wood ? *Sanders*, I agree to none of your cases. *Montague*, surely in the *Chancery* it will bee over-ruled against you without doubt, and it is necessary that an Act of Parliament bee made upon it.

WHERE AND HOW

Tenant by Coppy, may make a joynture to his wife of the same Land.

A Stranger brings a writ of right against the husband and wife, in the same Court where the Land is by plea, and the husband and wife doe appeare, and the demandant doth Count against them ; and the husband and wife doe defend, and say that they have more right than the demander, and offer to try it by Battell ; and the demander and Tenants doe Imparle, at which day the demander appeares, and the husband and wife make default, whereby small judgement is given against them ; and at the same Court the Recoverer *Surrenders* the same Land into the Lords hands, to the use of the Husband and Wife, and the heires

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of their two bodies begotten; and it was sayd, that this assurance hath beene used 1. *Ed.* 6. *Dalisons* reports.

In Monsier
Wiers reports
whether a
recovery in
Court Baron
may defeat
an entayle.
B. Regis 2.
Coment. 21.

Pell et Hikden: Trin. 36. *Eliz. Rot.* 547. *en* the Kings bench: Tenant in Tayle, the remainder in Fee; Tenant in Tayle surrenders to the use of *I. S.* in Fee; *I. S.* suffers a Recovery, and vouches the Tenant in Tayle, who vouches the common vouchee, and by speciall Verdict it was found that there was never any recovery before in that manner, and it is not yet adjudged. *Gawdy* and *Clinch*, that the recovery cannot be a Barre; for warranty cannot be annexed to an estate at will; also he shall not recover in value, because of the estate at will. *Fenner* and *Popham* chiefe Justice to the contrary, and that warranty may be annexed to Cobby-hold Land, though it bee an estate at will of the Lord; but as it is an estate in Fee, performing the services and duties, the Law will account them Tenants in Fee: Also recovery in value, being but a fiction in Law, *le common vouchee* shall bee accounted to have the Land in value of the Cobby-hold, within the Mannour: and the Vouchee 23. *Henr.* 8. *Br. Recovery* in value 27. that such a Recovery is used in ancient demesne upon a writ of right, and Voucher over, and that of a Free-hold there; yet enquire of such a Recovery upon a plaint, there of Land of Base Tenure, for that cannot bee warranted, &c.

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But in the Common Bench, in trespasse brought by *Comb*, against *Peares* and *Turner*. *Mich.* 36. *et* 37. *Eliz.* *Rot.* 14. *Bromeley Brittain Hall* in *Essex*: Tenant in Tayle of a Coppy-hold suffers a recovery with Voucher, where no recovery was before; the lesser enter, by the Court, that cannot be, but he shall have a Formdone in discender; for the recovery in Court Baron cannot availe, because a warranty cannot be annexed to an estate which is at the will of the Lord. Also there can bee no Recovery in value; first because there can be no recovery in value of Lands out of the Mannour, and the Coppy-land is at the Lords will: Secondly, Coppy-hold Land is granted by Coppy only; and if by the Recovery the Tenant may have it; the course and *Custom*e of the seignory would be destroyed, which shall not be: Thirdly, the Lord shall loose his fine, and Fealty also; for the Coppy is *admissus est tenens, &c. et Dat. Duo de fine pro tali ingressu, &c. et fecit fidelitatem*. Fourth *et fin. Ph. et Mar.* A Coppy-holder Surrenders to the use of his wife for Life, the remainder to the right heires of the husband and Wife; the Wife dyes, the Husband survives: the question is, who shall hold the Land; and it was said that if the Husband had no Issue by that Wife, then his heire shall have it.

Adjudged in the Common Bench, that a recovery cannot binde an entaile.

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cases reported in a certaine *BOOKE*.

But it was said there, that if the Wife had Issue by another Husband, it was there doubted. But it was holden by the better opinion in *Dier*, that the Husband and his heires shall have the Land; yet if the Husband had first two sonnes, the heires of the Husband, and the heires of the Wife, shall have the Land in common after the decease of the Wife, and for prooffe thereof hee puts this case, if Land bee given for Life, the remaynder to two men and their heires, they cannot have one heire in the case: if the Tenant for life dye before them in remainder they shall bee Joine-Tenants, and the heire of the survivor shall have all: But if none in remainder bee in life, when the Tenant for life dyes, then the heires of them in the remainder shall hold in common.

Thirty seventh *Henry* the eighth; A Coppy holder to the intent to make an assurance to his Wife, suffers another to bring a Writ of right in the Coppy Court, and they joyne the Battell, and at the day the Husband and Wife make default, and finall judgement was given; and after the recoverer surrenders the same Land into the Lords hands, to the use of the Husband and Wife and their heires; and a good assurance *pur Cur*.

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A *Coppy holder* makes a Lease at Will to another, who commits Waste, which is a cause of Forfeiture ; the Lessor brings an Action upon the case against the Lessee : By *Walsh, Weston, and Dier*, the Lord may enter, and have Trespasse against the Lessors his Tenant ; and therefore it is reason that hee shall bee recompenced : But the Lord shall have a speciall Writ of Trespasse, and not *vi* and *armis*, because the entry was lawfull. 8. et 9. *Eliz. ibid.*

A Coppy holder brings an action \odot upon the case against lessee for wast and good.

The Lord *Dacres* enters upon his *Coppy-holder*, and leaseth it to a stranger for yeares ; the Lessee enters, and was ejected by the *Coppy-holder*, and hee brings a writ of *Electione firme* : The *Coppy-holder* pleades that the Lands are demisable *per Custome* ; and so they were at issue : and hee shewed in evidence a *Coppy* made 13. *Hen.* the eighth, by which a Tenant had surrendered the Lands, to have and to hold, &c. whose estate hee had, and by another Tenant rendring the yearely Rents, Customes, and Services ; and also hee produced certaine Witnesses who proved the Land to bee *Coppie* by the space of 69. yeares. The Plaintiffe, to destroy the Title of that evidence, shewed certaine Rentales that they were Free Lands, &c. 9. et 10. *Henry* 7. and not *Coppy* ; and also another Rentall to that intent, in 12. *Henry* 6 which proved that those *Lands* were leased for twenty yeares : *Per. Cur.* this evidence does not disprove the *Coppy-hold*, for it was not within the time of memory ; but if hee had shewed the *Indenture* of

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Lease made within 50. yeares, or 80. yeares, so that a man might remember it, then it had beene good, although the statute of limitation extends not unto it, by the Justices, such evidence as proves it to be within time of memory is good.

Also by them ; if those Lands bee in the hands of the Lord by forfeiture, Escheate, or Surrender, yet the Custome remaineth ; for hee may demise them againe, and the Custome shall bee revived ; but by some men, if by Escheate it bee in the Lords hands, the *Custome* is extinct. 8. et 9. *Eliz. Ibidem.*

The Lord cannot increase a fine which is certaine.

Addington Lord of *Harlow* in *Essex*, would encrease the Fines of his Coppy-hold Tenants, which were proved to bee certaine : And it was holden that hee could not increase them, and it shall be a good prescription to say, alwaies ready to pay such a summe and no more. 18. 19. *Eliz.*

4. *Eliz.* It was mooved by *Manwood* Sergeant, if a Coppy-holder in Fee in right of his Wife doe surrender, the Wife being not examined by the Steward, but some of the Tenants, the *Custome* permitting it, the Husband dyes : Whether the Wife shall sue by plaint in Nature of a *Cui in vita*, or may enter ? And by him shee may enter, because it is no discontinuance, for that it is a surrender to the Lord who hath the reversion ; for if a Tenant in Tayle enfeoffe him in the reversion, it is no dis-

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continuance ; but if she had been examined, shee should have been barred for ever.

And *Dier*, if a Cobby-holder in Tayle surrender to the Lord to the use of a stranger, the Issue may bring a plaint in Nature of a Formdone in discender, and purge the discontinuance, for it is within the statute *De donis Conditionalibus*, *Lit Fo. 16. Com 233. 15. Hen. 8. Br. tit. Tenant per Copie 24.*

And by *Manwood*, no negative prescription may prevaile against a statute : And the Common Law is no other but an ancient usage throughout all the Realme ; and a prime Custome may encounter with it, but not with a statute. Nota.

And by *Dier*, if after the Surrender the Lord admit the Wife againe, yet shee shall bee in by her Husband in construction of the Law.

Cobby-hold of inheritance discends unto two sisters by two venters, none of them making entry, and before the Court and admission one of them dyes, her heire shall have their moyty, and not the other sister, by *Dier* chiefe Justice in the Chancery.

Also if a Cobby-holder in Taile surrender to another in Fee, who is admitted, this is a discontinuance, and so the Husband of his Wifes Cobby-hold : And hee said, that a remitter shall be of a *Cobbyhold*, as it shall be of a Freehold and inheritance at the common Law. *13. et 14. Eliz.*

In the *Dutchy* it was in question ; whether a Cobby-hold may be entailed or not ? And by

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Wray chiefe Justice, and *Manwood* chiefe Baron ; the Tayle was not Fee simple at the Common Law. if it did not appeare by the Custome, and that may be proved by the Court Roles, or by some other prooffe that there is a recovery by plaint of Formedon, or the Lands had descended according to Land in Tayle, as *possessio fratris* shall not bee of it, or that that the daughter shall not inherit, before the sonne which is unckle to the same. *Egerton* was of counsell with this case, which was betweene *Sherington* and another. 22. *Eliz.*

Hanchet and *Roffe* concerning land of Dicot in Stepping *Hackney*, a Cobby-holder of inheritance dies, the Lord grants the wardship of the Land, during the minority of the heire, to the Wife being sole ; shee takes a Husband and dyes : It was demanded whether the husband should have it or not ? And it seemed not, but if it had beene a thing in which he had interest to his owne use, that he should have it, as a Lease for yeares ; the executor shall have it without admittance of the Lord ; so the husband shall have a Lease for yeares made to his Wife, without admission.

By all the Justices. 17. *Eliz.* If a Cobby-holder in Fee take an estate in Tayle by Charter-hold, or take a Lease for yeares by Indenture, his Cobbyhold is confounded.

7. et 8. *Eliz.* by *Harpour* and others ; a Lessee for yeares of a Mannour may make Coppies (if the

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Custom be so) to a man and his heires *secundum consuetudinem &c.* for if the Cobby-holder in fee dye, his heire is in by descent, and ought to be admitted, or else he shall compell the Lord to admit him, for it is of necessity. But in Coppies for life or yeares it is otherwise, for by the death of the Tenant, there is not any that can compell the Lord to make him a new Cobby if he will not, but hee may retaine the Land in his owne hands, and therefore the grants of such Coppies as are expired, made by a lessee for yeares, are voyd.

26. ELIZ.

First, Land Demiseable, by Cobby in the time of *Richard* the second, is perfect Cobby-hold; so if it be demised by *Cobby* 15. or 16 yeares.

Secondly, if the Lord purchase the Coppihold of his Tenant for money, this is clearly a surrender, and an extinguishment of the Cobby, and it is not demiseable by *Cobby* after: But if the Lord enter for forfeiture without presentment found, that is demiseable by Cobby againe.

Thirdly, if the Lord bring Trespas against a Cobby-holder, who pleads that it is Freehold, this is a forfeiture, and the Lord may enter.

Fourthly, the Lord cannot seise, because his *Cobby holder* was sworne to give evidence against him, for this is no forfeiture.

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Fiftly, if a *Coppy-holder* disseise his Lord of other Land, that is not a forfeiture of the Coppy-hold.

Sixtly, if a Coppy-holder dye without heire, and the Lord enter by escheat, this is demiseable by Coppy againe ; but if the Lord afterwards doe make a feoffment, or suffer a recovery, and after doe repurchase it, it is not demiseable ; but if the Lord reverse the Judgement upon recovery by error, attaint, or deceit, and hath restitution, then it is demiseable by Coppy againe.

A disseisin doth not extinguish the Custome, nor acts done by the disseisor.

Seventhly, if a Coppy-holder suffer a recovery to be prescript at common Law by collusion, or make a Feoffment, or bargaine and sale, and the Lord enters, and makes a lease for yeares thereof ; this Land is not demiseable by Coppy againe.

Eighthly, if a Coppyholder surrender his Land ; to the intent that a stranger shall have the Rent out of it by Coppy ; it is no good Coppy-hold Rent.

Ninthly, if there bee two joynt-tenants in Common of a Manour ; and a Coppy-holder surrenders to the use of one, this is not Coppy-hold Land.

Tenthly, if the Husband and Wife bee joynt-coppy-holders of the purchase of the husband during Coverture, and the Husband is attainted of Felony and dyeth, this is not a Forfeiture of any part of the Coppy-hold ; but if the purchase was

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made before the coverture, then it is a forfeiture of the moyty.

Eleventh, if two Cobby-holders exchange by licence, and after the part of the one is recovered by an elder title, hee may enter into the Land which the other hath in exchange.

Twelvth, If two Coperceners Cobby-holders make partition, and the one is impleaded, and doth lose by just title, and the recoverer enters into the Land, she cannot enter upon her sister, because shee did not pray in aid for the rate. A feme Covert Joynt Cobby-holder with another in Fee may surrender her moyty to the use of her Husband, and it is good.

Thirteenth, the Kings Steward without any patent of his office seiseth divers Cobby-holds, and afterwards the Lord Treasurer and those of the *Exchequer* doe lease the same Land for yeares ; and thereupon it was moved, whether Coppies made by the Steward without patent were good ? and the Lord *Dier* thought they were good *Copies*, but in the *Exchequer* the Barons were of another opinion.

Fourteenth, a man seised of a Mannour, to which Cobby-holders for yeares and others are belonging hee deviseth by testament the same Manour to a certaine person for payment of his debts, during which time divers Coppies expire, and the devisees grant new Coppies, and afterwards during the terme, the devisees grant in reversion, and a particular

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Tenant surrenders in *Court* to the use of the grantee, and after the wife of the devisor recovers in Dower part of the Mannour, and hath execution of those *Coppy-holds* assigned by the Sheriffe for her Dower : And it was mooved, whether the Wife shall avoide those Coppies made by the devisees ? And *Browne* Justice was of opinion that no ; to which *Weston* agreed, for they said, that those are ordinary things, and which must bee done of necessity by force of the Custome, and not any deede or new charge created by the devisees, who are but officers to execute the Custome which of necessity must bee done, for they cannot bee made by any others who have the possession of the Mannour ; for it hath beene adjudged, that such Coppies and ordinary things, as presentment to a Church made by a disseisor, or by a Lessee for Life or Yeares shall stand good, and shall not bee avoyded by reason of the necessity : but other charges created by the Heire after the death of the Husband, as a Lease for yeares Rent charge in which ther is no such necessity, the Tenant in dowre shall discharge them, and although the Wife shall bee adjudged in by her Husband, yet she shall not have those things which chance before assignment of her dower. If a Wardship fall, or an avoydance of a *Church*, or a villaine regardant hath purchased, and the heire enters, or presents, these things the heire shall have, and not the Tenant in Dowre, and it may be that the Wife

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will never sue for her dower, or peradventure shee shall have other Mannours assigned her for the same. And as to the reason, that it is not a thing of necessity to grant Coppys in reversion, yet they were of opinion that because the *Custom* doth allow it, it is *Customley*, and therefore it may be put in execution: For the *Custom* is annexed unto the Land, and not unto the interest of the Lord. But *Wray* said, that of estates that are to *Coppy-holders* and their heires according to the Custom of the Mannour, if such a Coppy-holder dye without heire, the Custom is determined. If such a Lessor for life or yeares of the same Mannour grant new Coppys they are not good, and so there is a diversity.

A man cannot devise that his friends shall make Coppys or hold Courts, for none shall make Coppys but he that is Lord of the Mannour, and hath an interest.

The Lord of the Mannour shall have the government of the Coppy-hold during the infancy of his Tenant: Executors shall have a Lease for yeares of Coppy-hold Land without any new admittance.

The Husband of a Wife that is Coppy-holder for yeares, shall not bee newly admitted after the death of the *Wife*, nor bee tenant by the courtesie.

Where inheritance of a *Coppy-hold* descends, the heire may enter without admittance; but it was a doubt whether he should have an action of Tres-passe against a stranger before admittance; for

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before admittance he is not properly Tenant ; if such an heire will not come to the next *Court* ; the Lord may make proces against him.

A *Coppy-holder* shall have Trespass against his Lord, if his Lord out him, paying his Services and customes.

If erroneous judgement bee given against a *Coppy-holder* in the Lords Court, the Lord in his Court may reverse it, for it is not amendable in any other place or Court.

If the Lessee of a Coppy-hold commit waste, and the Lord seiseth for forfeiture ; the Coppy-holder shall not have an action of waste against his Lessee, as if Tenant for Life make a Lease for yeares, which Lessee maketh waste, and the Lessor recovers, the Tenant for Life shall not have an action of the Case, but is without remedy, for it was his folly that hee would not have a collatterall covenant of the Lessee that he should doe no waste.

A Coppy-hold is not forfeit for heresie, by the Stat. of 2. *Hen.* 5.

A Coppy-holder is not Ter-tenant, but is Tenant at the Lords will ; and a Coppy-hold is not bound by the statute of Wills nor of Fines, nor of Limitations.

A *Coppy-hold* shall not be extended by a statute, Marchant or Staple.

The Husband and Wife being seised of a Mannor to them and the heires of the Husband ; hee grants

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a Rent charge out of it, and dyes, the *Coppy-holder* surrenders, the Wife makes another *Coppy*, and dyes the grantee shall distraine upon the *Coppy-hold*.

If the Lord of a Mannour hath a great waste, and grants a rent charge out of the same, and the *Coppy-holders* have a *Common* in the waste, and they put in their *Cattell*, the grantee shall distraine them, if they cannot make prescription.

If a *Coppy-holder* surrender to the use of another, and the Lord will not admit him, nor make a grant unto him, the surrender is voyd.

If there be two Joynt *Coppy-holders*, and the one commits a forfeiture, hee shall forfeit but the Moyty

Lessee for yeares of a *Coppy-hold* shall have an *eiectione firme*; by *Plowden* and others.

If there be a Lease for yeeres of a Mannour, and one Coppy-holder purchase the reversion in fee, this is a destruction of the Coppy-hold, and the Lessee of the Mannour may put him out, and occupy during his terme. 8. *Eliz.* adjudged.

A Coppy-holder purchaseth the Mannour to him and another in fee, the companion may occupy the Coppy-hold joyntly presently. 14. *Eliz.*

Nota, it was agreed in the common Bench, 21. *Eliz.* that the bailiffe of a hundred, or of a base Court may take goods upon *levari facias*, to give execution to the Plaintiffe, as well as the Sheriffe; yet they agreed that divers bookes are against it. 4. *Hen.* 6. 22.

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Two Joynt Coppy-holders in Fee make a partition, that is good and no forfeiture, nor alienation, 12. *Eliz.* agreed in dutchy chamber.

If a Coppy-holder surrender, and then the Lord doth acknowledge a statute marchant, and after the Lord grants it by Coppy, the Coppy-hold is liable, for at the time of the knowledgement it was annexed to the free hold; but if a Coppy-holder acknowledge a statute, that is not liable.

If a man enter with force upon a *Coppy-holder*, he shall not have forceable entry, nor indictment, but the Lord shall have it, and upon restitution to the Lord the *Coppy-holder* shall enter.

The Lord grants to a *Coppy holder* his trees growing, or that shall bee growing upon the Land, he may fell trees now growing, and no forfeiture, by reason of the dispensation, but hee cannot cut the trees which shall grow in time to come.

If the disseisor of a *Mannour* make *Coppys* for life, and the disseisee enter, he shall defeat them, but of *Coppy-holds* in fee before disseisin, and a new grant of them upon Surrender in time of disseisin, it is otherwise *per Plowden*.

Popham in *Case Ramsey vers. Arthurs* 29. *Eliz.* A *Coppy-holder* may prescribe to have common in the Lords Land.

If a *Coppy-holder* surrender to the use of another, and the Lord grant it to *cesty que use*, making no mention of the surrender, yet it is good, *per Plowden*.

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If there bee a Mannour consisting of demesnes, Free hold and *Customary Tenements*, if the Lord grant certaine of the *Coppy holds* in Fee, the grantee may keepe *Court*, and do homage, and the *Coppy-holders* by their oaths may make presentments of their *Customes*, or of the death of any Tenant, and the grantee may make in *Court* a new estate by *Coppy*, as if it should be a perfect Mannour; but the stile shall not be, *Curia Manery*, but *Curia halimoti, id est, Convocatio tenentium*, for when they are assembled, they may enforme the Lord of their *Customes* and duties. It was otherwise adjudged in the *Com. bench. 29. Eliz.* betweene *Dodington* and *Chaffin* for parcell of the Mannour of *M.*

It was adjudged in the common Bench *29. Eliz.* that where Sir *Peter Carew* being solely seised of the mannour of *M.* In the County of *Devonshire* for Life; granted a Coppie in reversion according to the Custome of the Mannour, and dyed before the particular Coppy-holder; this is a good Coppy in reversion against the Lord, in whose hands soever the *Signory should come.*

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